UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

GERALD MINER, et al.,)	
Plaintiffs,)	
)	
v.)	Case No. 4:19-CV-95-SPM
)	
CURTIS SCHRIEBER, et al.)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Defendants' Renewed Motion for Default on Counterclaim (Doc. 30) and Plaintiff's Response to Defendants' Counterclaim (Doc. 32). The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Doc. 20).

Defendants filed their Counterclaim on April 29, 2019. Plaintiffs' response was therefore due 21 days later, on May 20, 2019. *See* Fed. R. Civ. P. 12(a)(1)(B). On June 11, 2019, Defendants moved for default on their counterclaim. On June 12, 2019, Plaintiffs filed requests for additional time to respond to Defendants' counterclaim. On July 2, 2019, the Court granted Plaintiffs' requests pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), finding that Plaintiffs' failure to file a timely answer was due to excusable neglect. The Court ordered Plaintiffs to file an answer to the counterclaim no later than Friday, July 12, 2019, and denied the motion for default judgment.

Plaintiffs did not file their answer to the counterclaim by July 12, 2019, nor did they file a motion for an extension of time to file the answer to the counterclaim. On July 17, 2019,

Defendants filed a second motion for default. Pursuant to the Local Rules of the United States

District Court for the Eastern District of Missouri, Plaintiffs' response to the motion for default

was due by July 24, 2019. See E.D. Mo. L.R. 4.01(B). On July 25, 2019, Plaintiffs filed their

Response to Defendants' Counterclaim. Plaintiffs did not seek leave to file this pleading out of

time. Plaintiffs also have not responded to Defendants' motion for default.

Because Plaintiffs' Response to Defendants' Counterclaim was not timely filed and

Plaintiffs did not seek leave to file it out of time, the Court finds that this pleading should be

stricken from the record. However, in light of the judicial preference for adjudicating claims on

the merits and the fact that Plaintiffs have now attempted to file an answer to Defendants'

counterclaim, the Court finds it inappropriate to grant Defendants' motion for default without

giving Plaintiffs the opportunity to explain the reasons for the delay and to seek leave to file their

answer to Defendants' counterclaim out of time pursuant to Rule 6(b)(1)(B). Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Response to Defendants' Counterclaim (Doc.

32) shall be **STRICKEN** from the record.

IT IS FURTHER ORDERED that Plaintiffs shall have until Friday, August 2, 2019 to

file a motion for leave to file an answer to Defendants' Counterclaim out of time, along with a

proposed answer. Failure to comply with this order may result in the entry of default judgment

against Plaintiffs on Defendants' counterclaims.

SHIRLEY PADMORE MENSAH

UNITED STATES MAGISTRATE JUDGE

Dated this 29th day of July, 2019.

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